Another common ground of appeal is that the trial judges erred in law and in fact in finding that the common object of the appellants was to kill the three victims. If the trial judges' assessment of Augustine Ang as a truthful witness is justified in all the evidence and the circumstances and they were convinced that his story was true and acted upon it after warning themselves of the danger of convicting each of the appellants on his uncorroborated evidence then in our judgment there was no such error in law or in fact on the part of the trial judges. It mattered not, in our view, that on Augustine's evidence there were other common objects shared by all the appellants or that some of them shared some other common object or common objects such as robbery or the disposal of dead bodies or assault which were not shared by the others so long as it was proved beyond a reasonable doubt against each one of the appellants that he shared with the rest of the appellants the common object of killing the persons who were expected by them to arrive at Andrew's house on the night of the 29th December 1971.

It is also contended on behalf of the third appellant that the trial judges should not have admitted in evidence the cautioned statement made by him to a police officer after his arrest because he had made the statement under duress. The question as to its admissibility had been fully considered during "a trial within a trial" and we see no reason to doubt that the trial judges' discretion had not been judicially exercised. A somewhat similar ground was raised by the fourth appellant in his grounds of appeal the submission being that his cautioned statement was inadmissible because he had himself written the contents when the law requires the statement to be taken down in writing by the police officer to whom the statement is made. There is no substance in this point. The law governing the admissibility of such cautioned statements is contained in section 121 of the Criminal Procedure Code and Schedule E to that Code. Subsection (5) of section 121 expressly provides for the admissibility of a statement whether "it . . .is oral or in writing" and proviso (b) of section 121(5) gives the court a discretion to refuse to admit a statement made after arrest "if it appears to the court that the statement was not made and recorded substantially in compliance with the provisions of the rules set out in Schedule E to this Code".

Finally in respect of each of the nine appellants we have scrutinised with care the transcript of the evidence before the trial court having regard to the arguments urged before us by all the counsel that the conviction of each of their respective clients was unreasonable or was not supported by the evidence. We have considered these arguments bearing in mind the observations of the trial judges after a lengthy trial during which, as they said, Augustine Ang was subjected to a thorough and severe cross-examination for seven days out of the nine he spent in the witness box and bearing in mind the trial judges' assessment of Augustine Ang as a truthful witness on whose evidence they had no hesitation in acting well knowing the danger of acting on the evidence of a self-confessed accomplice to the crime of murder. We have come to the conclusion that there was sufficient evidence to warrant the conviction of each of the nine appellants on all the three charges of murder read with section 149 of the Penal Code.

Accordingly the appeals of all the nine appellants are dismissed.

Appeals dismissed.

Solicitors: *Lee & Co.; Lim & Gopalan; Ironside & de Souza; J. B. Jeyaretnam & Co.*

RE HUME INDUSTRIES (FAR EAST) LTD.; HUME INDUSTRIES (F.E.) LTD. v. HUMES LTD.

[O.C.J. (Tan Ah Tah J.) March 30, 1974]
[Singapore — Originating Summons No. 397 of 1973]

Companies — Dividend — "Profits available for dividend" — Meaning of — Shareholders — Preference shareholders — Ordinary shareholders — Share premiums whether profits — Companies Act (Cap. 185), s. 60.

This was an originating summons taken out by Hume Industries (Far East) Ltd. as plaintiff. The first defendant is Humes Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of ordinary stock or shares issued by the plaintiff company. The second defendant is Orbit Private Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of cumulative participating preference stock or shares issued by the plaintiff company.

Article 5 of the Company's Articles of Association states:

"5. The present capital of the Company is Sixty-four Million Dollars divided into Sixteen Million 5% Cumulative Participating Preference Shares of One Dollar each and Forty-eight Million Ordinary Shares of One Dollar each.

(a) The Cumulative Participating Preference Shares shall confer on the holders thereof the rights and privileges following:—

(i) The right to receive a fixed cumulative preferential dividend at the rate of Five dollars per centum per annum on the capital for the time being paid up thereon.

(ii) The right whenever the surplus profits of any year (available for dividend) remaining after payment of such fixed cumulative preferential dividend to the close of that year shall be more than sufficient to pay a dividend for that year at the rate of Five dollars per centum on the capital paid up or credited as paid up on the ordinary shares to participate in the surplus profits of the year available for dividend rateably with the holder of the ordinary shares in proportion to the capital paid up on such shares whether preference or ordinary, and;

(iii) The right in the event of the winding up of the Company to have the surplus assets applied first in paying off the capital paid up on the Cumulative Participating Preference Shares held by them respectively and secondly in paying off the arrears if any of the fixed cumulative preferential dividend aforesaid whether earned or declared or not down to the commencement of the winding up but shall not confer any further right to participate in profits or assets."

The problem of construction raised relates to the meaning of the phrase "profits available for dividend".

Held: (1) "profits available for dividend" means the profits which the directors consider should be distributed after making provision for past losses, for reserves or for other purposes;

(2) share premiums received by the company in any year cannot be regarded as being profits of that year available for dividend within the meaning of article 5(a)(ii);

(3) the onus is on the preference shareholders to show that on the true construction of article 5(a)(ii) they are entitled to share in the surplus profits of the company.

Cases referred to:-

(1) *Re The Isle of Thanet Electricity Supply Co. Ltd.* [1950] Ch. 161.

(2) *Long Acre Press Ltd.* v. *Odhams Press* [1930] 2 Ch. 196.

(3) *Re Buenos Ayres Great Southern Railway Co. Ltd.* [1947] Ch. 384.

(4) *Burland* v. *Earle* [1902] A.C. 83.

(5) *Stewart* v. *Sashalite* [1936] 2 All E.R. 1481.

(6) *Re Bridgewater Navigation Co.* [1891] 2 Ch. 317.

ORIGINATING SUMMONS.

Richard Searly Q.C. and *M. Karthigesu* for the plaintiff.

John Young Q.C. and *G. Starforth Hill* for the first defendant.

P. T. E. Curry Q.C. and *L. P. Thean* for the second defendant.

Tan Ah Tah J.: This is an originating summons taken out by the plaintiff company Hume Industries (Far East) Ltd. The first defendant is Humes Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of ordinary stock or shares issued by the plaintiff company. The second defendant is Orbit Private Ltd. which is sued personally and as representing all other persons who are now and all other persons who may hereafter be holders of cumulative participating preference stock or shares issued by the plaintiff company.

The summons raises, *inter alia*, certain questions of construction of the articles of association of the plaintiff company (hereinafter referred to as "the company").

The most important article, for the purposes of this case, is article 5 the relevant part of which provides as follows:

"5. The present capital of the Company is Sixty-four Million Dollars divided into Sixteen Million 5% Cumulative Participating Preference Shares of One Dollar each and Forty-eight Million Ordinary Shares of One Dollar each.

(a) The Cumulative Participating Preference Shares shall confer on the holders thereof the rights and privileges following:—

(i) The right to receive a fixed cumulative preferential dividend at the rate of Five dollars per centum per annum on the capital for the time being paid up thereon.

(ii) The right whenever the surplus profits of any year (available for dividend) remaining after payment of such fixed cumulative preferential dividend to the close of that year shall be more than sufficient to pay a dividend for that year at the rate of Five dollars per centum on the capital paid up or credited as paid up on the ordinary shares to participate in the surplus profits of the year available for dividend rateably with the holder of the ordinary shares in proportion to the capital paid up on such shares whether preference or ordinary and

(iii) The right in the event of the winding up of the Company to have the surplus assets applied first in paying off the capital paid up on the Cumulative Participating Preference Shares held by them respectively and secondly in paying off the arrears if any of the fixed cumulative preferential dividend aforesaid whether earned or declared or not down to the commencement of the winding up but shall not confer any further right to participate in profits or assets."

I shall refer to the two classes of shareholders as preference shareholders and ordinary shareholders. In my opinion, article 5 sets out exhaustively the rights of the preference shareholders while the company is a going concern. In other words, while the company is a going concern, they have no further rights beyond those given to them by article 5. This principle is clearly stated in *Re The Isle of Thanet Electricity Supply Co., Ltd.*[1]

It should be noted that a preference shareholder's right is to a cumulative dividend. It follows that if in any year it is decided to divide the profits of the company among its members, a preference shareholder has a right taking priority over the ordinary shareholders to a dividend at the rate of 5% per annum in respect of the financial year during which the dividend is declared and also to a dividend at the rate of 5% per annum in respect of any prior financial year in respect of which he has not already received a dividend at the rate of 5% per annum.

It should also be noted that a fresh entitlement to a preferential dividend accrues to a preference shareholder in respect of each financial year. Therefore if it is decided to divide the profits of the company in any financial year, a preference shareholder is entitled to receive as a matter of priority a dividend at the rate of 5% per annum in respect of that financial year, irrespective of whether he has received a dividend exceeding 5% per annum in respect of the previous financial year.

Before considering the precise meaning of the phrase "profits available for dividend," it is convenient to deal with the manner in which article 5(a)(ii) is in practice applied by the company. In the first place, out of the profits a dividend at the rate of 5% is paid to the preference shareholders. If after such payment there still remain profits of the year available for dividend, a dividend may be paid from those profits to the ordinary shareholders up to an amount which gives the ordinary shareholders a dividend of 5% for that year. If after the payment of such dividends to the preference and ordinary shareholders respectively there still remain profits of the year available for dividend, a dividend may be paid from those profits, but the preference shareholders will be entitled to participate rateably with the ordinary shareholders in any dividend so paid.

At this stage it should be mentioned that article 131 provides that the directors of the company may before recommending any dividend set aside out of the profits of the company such sums as they think proper as a reserve fund which shall be applicable, *inter alia*, for such purposes as the directors shall in their absolute discretion think conducive to the interests of the company. Further, article 134 provides that the company in general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits and may fix the time for payment but no larger dividend shall be declared than is recommended by the directors.

In my opinion it is clear from the words used in article 5(a)(ii) that the right of the perference share-

holders to participate in the surplus profits of the year available for dividend rateably with the ordinary shareholders accrues to them only after a dividend at the rate of 5% is paid or declared as being payable to the ordinary shareholders. The words "surplus profits" when used for the second time in article 5(a)(ii) clearly refer to a different fund from the "surplus profits" referred to in the first line of article 5(a)(ii).

It is also clear in my opinion that the phrases in which the word "year" appears in article 5(a)(ii) indicate and point to the fact that article 5(a)(ii) is concerned with the profits of a particular year. In my judgment, article 5(a)(ii) confers no right on the preference shareholders to participate rateably in any distribution otherwise than out of the profits of that year.

As to the precise meaning of the phrase "profits available for dividend," there is a passage in *Palmer's* Company Law, 21st ed. page 662 which reads as follows:

> " 'Profits available for dividend' has been held to mean the profits which the directors consider should be distributed after making provision for past losses, for reserves or for other purposes."

Two cases are cited in support of this statement, the first being *Long Acre Press, Ltd.* v. *Odhams Press*,[2] and the second being *Re Buenos Ayres Great Southern Railway Co., Ltd.*[3]

It is submitted by counsel for the preference shareholders that the headnote in *Re Buenos Ayres Great Southern Railway Co., Ltd., supra*, is incorrect in so far as it suggests that the directors of the company might carry forward such amount of the profits of a year as they thought fit. But a careful perusal of the judgment shows that the headnote is quite correct. If any support for this view is needed, it can be found in the report of the same case in the *All England Law Reports* [1947] 1 All E.R. 729 at page 741 where the terms of the declaration made by the court are set out as follows:

> "Declaration that the fixed dividends for each year on the 5 per cent preference stock and the 6 per cent preference stock were payable only out of such part, if any, of the profits of such year as might be remaining and available for dividend after setting aside to reserve or carrying forward in the accounts such amounts as the directors of the company might think proper."

It should be observed that in *Buenos Ayres Great Southern Railway Co., Ltd., supra*, the articles of association did not confer any power on the directors of the company to carry forward profits.

In view of the foregoing I accept the passage which I have cited from *Palmer's* Company Law as a correct statement of the law.

It is pertinent to state at this stage that even when there is no article similar to article 131, a company has an implied power to carry forward profits or to carry them to reserve, unless its articles expressly provide that the whole of its profits are to be distributed; the articles of the company contain no such provision. This implied power of the directors of a company is referred to in *Burland* v. *Earle*,[4] *Stewart* v. *Sashalite*,[5] and *Re Buenos Ayres Great Southern Railway Co., Ltd., supra*. In the present case the powers conferred by article 120(a) include a power to carry forward profits.

There is another phrase defined in *Palmer's* Company Law, 21st ed. page 662 to which I should refer. The phrase is "divisible profits" and the passage at page 662 reads as follows:

> " 'Divisible profits' means the profits which the law allows the company to distribute to the shareholders by way of dividend; the terms 'divisible profits' and 'profits in the legal sense' are synonymous."

The two cases to which I have referred in dealing with the meaning of the phrase "profits available for dividend" show clearly that that phrase as used in article 5(a)(ii) has a different meaning from the words "divisible profits." The affidavit of Mr. Lee Khye Seng, the secretary of the company, filed on the 29th day of August 1973 contains undisputed evidence that there are profits of a year of the company over and beyond what is recommended by the directors for distribution. The authorities which I have cited make it clear that those profits are not profits of that year available for dividend within the meaning of article 5(a)(ii).

In the course of his argument counsel for the preference shareholders referred to profits of the company which had been allocated to the capital reserves account, the revenue reserves account and the unappropriated profits account. In reliance on *Re Bridgewater Navigation Co.*,[6] it was at first contended by counsel for the preference shareholders that although profits of a year when allocated to a reserves account were not available for dividend, they could be written back and so become available for dividend again. Subsequently, he conceded that that case did not lay down the law as he had stated it. He submitted that what was decided by that case was that reserves built up by allocation thereto of profits continued to be profits which could be distributed. In my opinion, what the case decided was that such reserves continue to be "divisible profits." But although they continue to be "divisible profits," they are in my judgment not "profits available for dividend" within the meaning of article 5(a)(ii).

With regard to the share premium account, amounts placed to the credit of that account during the course of a year and still in that account at the end of the year are, in my opinion, not profits of the year available for dividend because they have been allocated to a reserve fund and do not form part of the profits recommended for distribution. Share premiums are not divisible profits except insofar as they may be applied in accordance with the provisions of section 60 of the Companies Act (Cap. 185). Further, share premiums cannot be used to pay the cumulative preferential dividend. For all these reasons, share premiums received by the company in any year cannot in my opinion be regarded as being profits of that year available for dividend within the meaning of article 5(a)(ii).

There is one further observation to be made with regard to article 5. The words "but shall not confer any further right to participate in profits or assets" at the end of article 5(a)(iii) appear to me to be inappropriate in the context of that sub-paragraph. In my view, the words should be separated from article 5(a)(iii) and should appear at the end of article 5(a).

It is clear from the authorities one of which is *Re The Isle of Thanet Electricity Supply Co., Ltd.*[1] that the onus is on the preference shareholders to show that on the true construction of article 5(a)(ii) they are entitled to share in the surplus profits of the company in the manner described by counsel who is arguing their case. In my judgment, for the reasons which I have stated, the preference shareholders have failed to discharge that onus.

The questions asked in the summons and the answers thereto are as follows:

1. Do the profits (or class or classes of profits) of the company out of which the company in general meeting is entitled at any time duly to resolve that the whole or any part of the fixed cumulative preferential dividend (or any arrears thereof remaining unpaid at that time) on issued cumulative participating preference stock (or shares) in the capital of the company provided for in Article 5(a)(i) of the articles be declared, include —

(a) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the capital reserves account?

(b) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the revenue reserves account?

(c) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the unappropriated profits account?

(d) subject to the provisions of section 60 of the Companies Act 1967 (as amended) —

(i) any amount which has prior to that time been duly carried to and at that time stands to the credit of the share premium account?

(ii) so much of such amount referred to in (i) above as represents premiums derived from the issue at a premium of ordinary stock (or shares) in the capital of the company?

(iii) so much of such amount referred to in (i) above as represents premiums derived from the issue at a premium of cumulative participating preference stock (or shares) in the capital of the company?

The answers to paragraphs (a), (b) and (c) of question 1 are in the affirmative, subject to the rider that if and insofar as the profits of the year not already carried to a reserve account are sufficient to pay such cumulative preferential dividend, such profits should ordinarily be resorted to in the first instance.

The answers to sub-paragraphs (i), (ii) and (iii) of paragraph (d) of question 1 are in the negative.

2. Do the profits (or class or classes of profits) of the company out of which the company in general meeting is entitled at any time duly to resolve that the whole or any part of the fixed cumulative preferential dividend (or any arrears thereof remaining unpaid at that time) on issued cumulative participating preference stock (or shares) in the capital of the company provided for in article 5(a)(i) of the articles be declared, include —

(a) revenue profits of the company which prior to that time have been duly carried to and at that time stand to the credit of a Balance Sheet account forming part of stockholders' (or shareholders') funds?

(b) capital profits of the company?

(c) capital profits of the company which prior to that time have been duly carried to and at that time stand to the credit of a balance sheet account forming part of stockholders' (or shareholders') funds?

The answers to paragraphs (a), (b) and (c) of question 2 are in the affirmative, subject to the rider that if and insofar as the profits of the year not already carried to a reserve account are sufficient to pay such cumulative preferential dividend, such profits should ordinarily be resorted to in the first instance and save that no part of the share premium reserve account is so included.

3. What are the profits (or class or classes of profits) of the company out of which the company in general meeting is entitled at any time duly to resolve that the whole or any part of the fixed cumulative preferential dividend (or any arrears thereof remaining unpaid at that time) on issued cumulative participating preference stock (or shares) in the capital of the company provided for in article 5(a)(i) of the articles be declared?

4. Are there any and if so which profits (or class or classes of profits) of the company out of which the company in general meeting is not entitled at any time duly to resolve that the whole or any of the fixed cumulative preferential dividend (or any arrears thereof remaining unpaid at that time) on issued cumulative participating preference stock (or shares) in the capital of the company provided for in article 5(a)(i) of the articles be declared?

The answer to questions 3 and 4 is that such cumulative preferential dividend may be paid out of any profits of the company except profits placed in the share premium reserve account but if and insofar as in any year there are profits of that year not already carried to a reserve account and those profits are sufficient to pay such cumulative preferential dividend, such profits should ordinarily be resorted to in the first instance.

5. Do the profits (or class or classes of profits) of the company in the division of which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are entitled at any time to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5 (a)(ii) of the articles, include —

(a) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the Capital Reserves account?

(b) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the Revenue Reserves account?

(c) profits of the company which prior to that time have been duly carried to and at that time stand to the credit of the unappropriated profits account?

(d) subject to the provisions of section 60 of the Companies Act 1967 (as amended) —

(i) any amount which has prior to that time been duly carried to and at that time stands to the credit of the Share Premium account?

(ii) so much of such amount referred to in (i) above as represents premiums derived from the issue at a premium of ordinary stock (or shares) in the capital of the company?

(iii) so much of such amount referred to in (i) above as represents premiums derived from the issue at a premium of cumulative participating preference stock (or shares) in the capital of the company?

The answers to paragraphs (a), (b), (c) and (d)(i), (ii) and (iii) of question 5 are in the negative.

6. Do the profits (or class or classes of profits) of the company in the division of which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are entitled at any time to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5(a)(ii) of the articles, include —

(a) revenue profits of the company which prior to that time have been duly carried to and at that time stand to the credit of a balance sheet account forming part of the stockholders' (or shareholders') funds?

(b) capital profits of the company?

(c) capital profits of the company which prior to that time have been duly carried to and at that time stand to the credit of a balance sheet account forming part of stockholders' (or shareholders') funds?

The answer to paragraph (a) of question 6 is in the negative.

The answer to paragraph (b) of question 6 is in the affirmative, if the profits are profits of the year — unless such profits have already been duly carried to the credit of a balance sheet account forming part of stockholders' funds (including the capital reserves account, the revenue reserves account and the share permium reserve account).

The answer to paragraph (c) of question 6 is in the negative.

7. What are the profits (or class or classes of profits) of the company in the division of which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are entitled to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5(a)(ii) of the articles?

The answer to question 7 is in any year, the profits of that year other than such profits already carried to the credit of a balance sheet account forming part of, stockholders' funds (including the capital reserves account, the revenue reserves account and the share premium reserve account) which are duly resolved to be distributed if and insofar as the profits of that year so resolved to be distributed exceed —

(i) the amount due by way of cumulative preferential dividends;
and

(ii) the amount required to pay a 5% dividend on ordinary capital.

8. Are there any and if so which profits (or class or classes of profits) of the company in the division of which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are not entitled to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5(a)(ii) of the articles?

The answer to question 8 is (a) all profits which are not profits of the year and (b) all profits of the year which have already been duly carried to the credit of a balance sheet account forming part of stockholders' funds (including the capital reserves account, the revenue reserves account and the share premium reserve account).

9. Is the company in general meeting entitled at any time duly to declare a dividend in which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are entitled to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5(a)(ii) of the articles when at that time the holders of such issued ordinary stock (or shares) have not received out of the profits of the year out of which that dividend is declared a dividend at the rate of Five dollars per centum on the capital paid up or credited as paid up on such issued ordinary stock (or shares)?

The answer to question 9 is in the negative.

10. Is the company in general meeting entitled duly to declare out of the profits of a financial year a dividend in which the holders of issued cumulative participating preference stock (or shares) in the capital of the company are entitled to participate rateably with the holders of issued ordinary stock (or shares) in the capital of the company pursuant to article 5(a)(ii) of the articles when at the time of such declaration the holders of such issued ordinary stock (or shares) have not received from any source a dividend at the rate of five dollars per centum on the capital paid up or credited as paid up on such issued ordinary stock (or shares) in respect of that financial year?

The answer to question 10 is in the negative.

11. When the company in general meeting duly resolves that assets of the company be capitalised and be distributed as capital to holders of issued stock (or shares) in the capital of the company pursuant to article 139 of the articles, are the holders of issued cumulative participating preference stock (or shares) in the capital of the company entitled to share rateably in such distribution with the holders of issued ordinary stock (or shares) in the capital of the company —

(a) if the assets so capitalised are profits which have been duly carried to and have thitherto been standing to the credit of the capital reserves account?

(b) if the assets so capitalised are profits which have been duly carried to and have thitherto been standing to the credit of the revenue reserves account?

(c) if the assets so capitalised are profits which have been duly carried to and have thitherto been standing to the credit of the unappropriated profits account?

(d) if the assets so capitalised are profits which have been duly carried to and have thitherto been standing to the credit of the share premium account?

(e) if the assets so capitalised are revenue profits which have been duly carried to and have thitherto been standing to the credit of a balance sheet account forming part of stockholders' (or shareholders') funds?

(f) if the assets so capitalised are capital profits?

(g) if the assets so capitalised are capital profits which have been duly carried to and have hitherto been standing to the credit of a balance sheet account forming part of stockholders' (or shareholders') funds?

(h) if the assets so capitalised are profits in the distribution of which by way of dividend the holders of such issued cumulative participating stock would be entitled to participate rateably as aforesaid?

(i) no matter what the source of class of the assets so capitalised?

The answers to paragraphs (a), (b), (c), (d), (e), (g) and (i) of question 11 are in the negative.

The answer to paragraph (f) of question 11 is in the affirmative, unless the assets referred to have already been duly carried to the credit of a balance sheet account.

The answer to paragraph (h) of question 11 is in the affirmative.

12. When the company in general meeting duly resolves that the assets of the company be capitalised and be distributed as capital to holders of issued stock (or shares) in the capital of the company pursuant to article 139 of the articles, and the holders of issued cumulative participating Preference stock in the capital of the company are entitled to share rateably in such distribution with the holders of issued ordinary stock in the capital of the company —

(a) would the holder of a quantity of such issued cumulative participating preference stock and the holder of an equal quantity of such issued ordinary stock each be entitled upon such distribution to receive an equal quantity of the same class of such capital?

(b) would such holder of issued cumulative participating preference stock be entitled upon such distribution to receive a quantity of cumulative participating preference stock and such holder of issued ordinary stock be entitled to receive an equal quantity of ordinary stock?

(c) how should such distribution be made?

In my opinion, these questions do not arise in this case and it is unnecessary to answer them.

The costs of all parties as between solicitor and client are to be paid by the plaintiff company. There will be a certificate for two counsel for each party.

Order accordingly.

Solicitors: *Allen & Gledhill; Rodyk & Davidson; Shook Lin & Bok.*